

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL 154 OF 2005

WITH

CIVIL APPLICATION NO.335 OF 2005

WITH

CIVIL APPLICATION NO.1420 OF 2005

Fathubhai Vithalbhai Chauhan & Ors..Appellants.

Vs.

Smt.Dhanuben wife of Kamubhai

Umedsinh

..Respondent.

...

Mr.R.M.Agrawal for the Appellants.

Mr.V.A.Gangal for the Respondent.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

19th December, 2005.

P.C. :

This Appeal arises out of a judgment and order dated 3rd November, 2004 of the District Judge, Dadra and Nagar Haveli, Silvassa in Regular Civil Appeal 6 of 2001. At the stage when the

appeal was heard finally, it transpired during the course of the hearing before the Court that an application at Ex.104 was moved before the Trial Court for the production of additional evidence. The Learned Trial Judge had issued directions permitting the Respondent to file a reply to the application. However, perhaps due to inadvertence the application remained to be disposed of. In these circumstances, both the learned counsel sought time to take instructions on the question as to whether the parties would be agreeable to the proceedings being remanded back to the Learned Trial Judge in order to enable the Appellants to lead additional evidence, before the Trial Court. At this stage, the Court has been informed that the parties are ready and willing to submit to an order of remand. In the circumstances, this Second Appeal shall stand disposed of by consent in the following terms :

- i) The impugned order of the District Judge, Dadra and Nagar Haveli dated 3rd November, 2004 is quashed and set aside;
- ii) Regular Civil Suit 23 of 1999 shall stand

restored to the file of the Civil Judge,
Senior Division, Silvassa;

- iii) It would be open to the Appellants to lead additional evidence for the purposes of proving the documents referred to in the application at Exh.104 and to adduce such other evidence in support of their case as they may be advised. The Respondent would be at liberty to lead additional evidence in rebuttal;
- iv) The Learned Trial Judge shall dispose of the proceedings upon a certified copy of this order being produced before the Court preferably within a period of six months.

The R & P be sent back forthwith. The Second Appeal is accordingly disposed of since no other point has been pressed on either side.

All the rights and contentions of the parties on the merits of the respective case are kept open.

In view of the disposal of the Second

Appeal, the Civil Applications are rendered infructuous and are accordingly disposed of.